IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

WRIT PETITION NO. 351 OF 2001

Shri Aires Rodrigues,
T1-B30, Ribandar Retreat,
Ribandar, Goa. ... Petitioner.

versus

1. Shri Zoivonta Esvonta Porobo,
   President,
   Administrative Tribunal,
   Coelho Pereira Building,
   Near Masjid,
   Panjim, Goa.

2. State of Goa,
   through Chief Secretary,
   Secretariat,
   Panaji, Goa.

3. Shri R. D. Khalap,
   Hon'ble Minister for Law,
   Judiciary & legislative Affairs,
   Government of Goa,
   Secretariat,
   Panaji, Goa.

4. Shri V. P. Shetye,
   Law Secretary,
   Government of Goa,
   Secretariat,
   Panaji, Goa.

5. Shri Avinash P. Vaze,
   Chairman,
   Goa Public Service Commission,
   EDC House,
   Panaji, Goa.

6. Shri Vilas Thali,
   Additional Advocate General,
   Government of Goa,
   Near Talaulikar's Hospital,
   Panaji, Goa. ... Respondents.

Mr. M. B. D'Costa, Advocate, Amicus Curiae.

Mr. M. S. Usgaonkar, Senior Advocate with Mr. Sudin Usgaonkar, Advocate for the Respondent No.1.

Mr. A. N. S. Nadkarni, Advocate General and Mr. P. A. Kamat, Additional Government Advocate for the Respondent No.2.

Mr. V. P. Thali, Additional Advocate General(Respondent No.6) in person with Miss S. Linhares, Additional Government Advocate for the Respondent No.6.

CORAM: V. C. DAGA &
P. V. HARDAS, JJ.

DATE OF RESERVING
THE JUDGMENT ; 24TH JULY, 2002.

DATE OF PRONOUNCING
THE JUDGMENT . 19TH SEPTEMBER, 2002.

JUDGMENT(PER P. V. HARDAS, J.)

By this Petition, filed in public interest, the Petitioner, a practicing lawyer in the State of Goa has challenged the appointment of the first Respondent, dated 24th October, 2001, as the President of the Goa Administrative Tribunal.

2. The Petitioner avers that the Petitioner being a practicing lawyer and being interested in the Administration of Justice has filed the present Petition in public interest and in the interest of the legal fraternity of Goa. It is stated that the Goa, Daman &

Diu Administrative Tribunal was constituted by the Goa, Daman & Diu Administrative Tribunal Act, 1965 which was passed by the Legislative Assembly of Goa and which subsequently received the assent of the Governor on 26th March, 1965. Consequent to the attainment of Statehood by Goa, in the "Goa, Daman & Diu Administrative Tribunal Act, 1965", the words "Daman and Diu" were omitted. The enactment is, therefore, presently entitled "The Goa Administrative Tribunal Act, 1965". By virtue of an Amendment Act of 1966, the Administrative Tribunal which earlier comprised of a Chairman and such number of other members as was determined by the State Government was amended to make the Tribunal a single member body headed by a President.

3. The Goa, Daman & Diu Administrative Tribunal Rules, 1966, which were framed in the exercise of the powers conferred by Section 13 of the Goa, Daman & Diu Administrative Tribunal Act, the qualifications for appointment of Member or Chairman are prescribed by Rule 2. Sub-Rule 2 of the said Rules prescribed the qualifications for appointment as a Chairman. Sub-Rule 2 reads as under:-

> "The Chairman shall be a person who is:
>
> (a) a judicial officer of seven years standing, or

(b) an advocate of seven years standing, or

(c) "holding a superior post not lower than Joint Secretary to the Government, in the Law Department of the Government for at least 3 years."

4. By a Notification which was published in the Government Gazette on 25th May, 2001, the Government of Goa, in exercise of the powers conferred by Section 13 of the Goa Administrative Tribunal Act, 1965 amended the Goa, Daman & Diu Administrative Tribunal Rules, 1966. The words "Daman and Diu" as appearing in the Goa, Daman & Diu Administrative Tribunal Rules, 1966 were omitted. Similarly, the word "Chairman" was substituted by the word "President". Clause (b) of Sub-Rule 2 of Rule 2 was substituted by the following:-

"An advocate of not less than seven years standing and with knowledge of Konkani, knowledge of Marathi being desirable".

5. The Petitioner states that the post of the President of the Administrative Tribunal is designated as Group "A" and carries a pay scale of Rs.14,300-400-18,300 which is identical to the pay scale of a District Judge. It is also stated that the President of the Administrative Tribunal enjoys all the emoluments, benefits and privileges as that of a District Judge. It is further stated that the President of the Administrative Tribunal discharges judicial

functions and the Tribunal is required to deal with 28 enactments. The Tribunal has Original, Appellate as well as Revisional jurisdiction and the Tribunal even sits in Appeal over the revisions of the Civil Judge, Senior Division. Thus, it is stated that the Government of Goa could not have appointed the first Respondent as the President of the Administrative Tribunal without prior consultation with the High Court as is contemplated in Article 233 of the Constitution of India. The Petitioner has, therefore, prayed for a Writ of quo warranto calling upon the first Respondent to show under what authority he is holding the post of President of Administrative Tribunal and has further prayed for setting aside the appointment of the first Respondent. The other relief which is prayed for is the issuance of Writ of Certiorari for quashing and setting aside the impugned Order of the first Respondent dated 24th October, 2001.

6. A Bill was introduced in the Legislative Assembly in the State of Goa on 19th July, 2001, which was published in the Official Gazette dated 28th July, 2001, seeking to create the post of Additional President of the Administrative Tribunal. The Bill sought to amend Section 3 of the Goa Administrative Tribunal Act, 1965 to include an Additional President who would constitute the Tribunal. The Bill sought to make the

powers of the President and the Additional President to be co-extensive and the jurisdiction to be concurrent. Wherever the word "President" occurred, amendment was sought to include the Additional President. The said Bill was thereafter passed by the Goa Legislative Assembly on 23rd July, 2001 and received the assent of the Governor of Goa on 5th September, 2001 and was published in the Official Gazette dated 12th September, 2001. Meanwhile, an advertisement dated 20th July, 2001 was issued for filling up the posts of the President and the Additional President of Goa Administrative Tribunal. In the said advertisement, under the heading "Age", "Essential" and "Other qualifications", it was stated that the candidate should not be less than 40 years of age and should be an Advocate of not less than 7 years of standing with knowledge of Konkani and Marathi being desirable. According to the Petitioner, this advertisement was issued even before the Bill was passed by the Legislative Assembly and received the assent of the Governor. Incidentally, it may be stated that the Petitioner has averred that the sister of the first Respondent is married to the third Respondent who at the relevant time was the Minister for Law, Judiciary and Legislative Affairs, Government of Goa. The Petitioner describes the third Respondent as the "co-brother" of the first Respondent.

7. The Government of Goa had constituted a Committee comprising of Respondent Nos.4, 5 and 6 who are the Law Secretary, the Chairman of Goa Public Service Commission and the Additional Advocate General of State of Goa respectively. It is this Committee of Respondent Nos.4 to 6 which had selected the first Respondent and had recommended his appointment. The first Respondent, therefore, came to be appointed as the President of the Goa Administrative Tribunal by an Order dated 24th October, 2001, published in the Official Gazette dated 8th November, 2001. It may be incidentally mentioned that the appointment of the first Respondent was on probation for a period of two years in the pay scale of Rs.14,300-400-18,300.

8. In response to the notice issued by this Court, the first Respondent filed his reply and had raised a preliminary objection regarding the maintainability of the Petition. According to the first Respondent, the Petitioner had prayed for a Writ of quo warranto and as the first Respondent was holding the requisite qualifications, the Petition was liable to be dismissed. Secondly, it is stated that assuming that consultation with the High Court was necessary, the first Respondent "could" have been appointed as the President of the Goa Administrative Tribunal and, therefore, the Writ of quo warranto would be a futile

writ. In response to the allegations that the advertisement had been issued without waiting for the Bill to become the law, the first Respondent states that he had been appointed as the President and not as the Additional President. It is also stated by the first Respondent that none of the appointments to the posts of the President/Chairman of the Administrative Tribunal had been made without prior consultation with the High Court. It may incidentally be stated here that the Petitioner has averred that the fourth Respondent herein, who is a retired District Judge was also holding the additional charge as the President of the Administrative Tribunal. Prior to the appointment of the fourth Respondent, the post of President/Chairman of the Administrative Tribunal had been held by one Shri A. D. Salkar, who was then the Additional District Judge. This post had earlier been held by one Shri F. N. Tavora, who was then a Civil Judge, Senior Division and who had been appointed on deputation to the higher post as President. The first Respondent in his reply has also challenged the locus standi of the Petitioner to file a Petition. The first Respondent has admitted that the sister of the first Respondent is married to the third Respondent but, however, denies the relationship of a "co-brother-in-law". The Respondent No.1 further states that the President of the Administrative Tribunal cannot be equated with a District Judge and, therefore,

no prior consultation with the High Court is required. The second Respondent i.e. the State of Goa, in its reply has also challenged the locus standi of the Petitioner to file the present Petition. It is also alleged that the Petitioner is seeking self publicity in the newspapers. It is also stated that the appointment to the post of President of the Administrative Tribunal vests with the State Government and, therefore, prior consultation with the High Court was not necessary. It is stated that there is no irregularity or mala fides involved in the appointment of the first Respondent. The first Respondent, therefore, claimed the dismissal of the Petition.

9. The third Respondent, who then was the Law Minister, has filed his Affidavit contending therein that the first Respondent has been appointed following due procedure as per the Goa Administrative Tribunal Act, 1965 and the Rules framed thereunder. The third Respondent denied the averment that the first Respondent had been appointed at his behest and further denied that Respondent Nos.4 to 6 were under his direct control. The third Respondent, however, in para 8 of his reply admitted that the sister of the first Respondent is married to the brother of the third Respondent.

10. Respondent Nos.4 and 5 have filed their reply contending therein that out of 35 candidates who had

applied, 26 candidates were eligible and were called for interview. The names of the 6 candidates were shortlisted and the first Respondent was first in the merit list. Respondent Nos.4 and 6 have also stated that there was no irregularity or mala fides involved in the appointment of the first Respondent.

11. When the Petition came up for final hearing, we requested Mr. M. B. D'Costa, Advocate to assist the Court as Amicus Curiae. Accordingly, Mr. M. B. D'Costa, Advocate has submitted his written submissions, which shall be referred to by us in our Judgment.

12. Section 3, Sub-Section (2) of the Administrative Tribunal Act, 1965 provides that the Tribunal shall consist of a President and an Additional President, both of whom shall be appointed by the Government. It further provides that both the President and the Additional President shall have co-extensive powers and a concurrent jurisdiction to deal with the cases filed in the Tribunal. Let us now examine the nature of the disputes which are referred to the Tribunal for adjudication.

13. Section 7 of the Goa Administrative Tribunal Act, 1965 provides that the Tribunal shall have same powers as are vested in a Civil Court under the Code of

Civil Procedure in respect of (i) taking evidence on oath, affirmation or affidavit; (ii) summoning and enforcing the attendance of witnesses; (iii) compelling the discovery and production of documents and material objects; (iv) requisitioning any public record or any copy thereof from any court or office; (v) issuing summons for examination of witnesses or production of documents. While exercising either revisional or appellate jurisdiction as per Section 7(1)(A), the Tribunal has the power, if it thinks necessary to direct further investigation to be made or additional evidence be taken or it may itself take such additional evidence or may remand the case for disposal with such direction as it deems fit. Section 7(2) provides that the Tribunal shall be deemed to be a Civil Court and its proceedings shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code. Section 10 of the Act clothes the Tribunal with the powers of review either on its own motion or an application made to it either by the party interested or on the application of the State Government. Section 11 provides that all final orders of the Tribunal shall be executed in the same manner as a Decree of a Civil Court. A Notification, published in the Official Gazette dated 31st December, 1976 clothes the Administrative Tribunal in the exercise of its

original, appellate or revisional jurisdiction with all the powers which are vested in a Civil Court.

14. Mr. M. B. D'Costa, the learned Counsel appointed as Amicus Curiae, has submitted before us that the Administrative Tribunal has the jurisdiction to decide:

A. Appeals under the Goa School Education Act, 1984.

Section 22 of the Goa School Education Act, 1984 provides for Appeals to the Administrative Tribunal from orders (i) refusing to recognise a school; (ii) withdrawing recognition of a school; (iii) stopping, reducing or suspending aid; (iv) refusing to grant permission to transfer, mortgage or lease movable or immovable property of a an aided school and (v) dismissing, removing from service any employee or reducing him in rank or retiring compulsorily or otherwise terminating service.

B. Under the Goa University Statutes, a teacher who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the governing body and aggrieved thereby has a right to appeal to the College Tribunal. By Notification in the Official Gazette, the Administrative Tribunal has been constituted as a Tribunal for the adjudication of

disputes or differences between the employee and the management of any affiliated college or institution. By a Notification dated 5th November, 1998, the Government of Goa constituted a College Tribunal consisting of the President of the Administrative Tribunal as its Presiding Officer.

C. Section 184(B) of the Goa Municipalities Act, 1968 provides the power of the Government to constitute one or more Appellate Tribunals for deciding Appeals arising from the Orders passed under Section 184. The Government of Goa by virtue of Notification dated 20th July, 1994 constituted the Administrative Tribunal as the Appellate Tribunal under Section 184(B) of the Goa Municipalities Act, 1968 and has appointed the Chairman of the Administrative Tribunal as the Presiding Officer of the Appellate Tribunal. It is interesting to refer to Section 184(B)(3) of the Goa Municipalities Act, 1968 which provided that a person shall not be qualified for appointment as the Presiding Officer of the Appellate Tribunal unless he is or has been a District Judge or an Additional District Judge or has for the last 10 years held a Judicial Office in India or has practiced as an Advocate for not less than 10 years in a High Court in India.

Rule 11 of the Goa Municipalities Appellate Tribunal Rules, 1989 provides that the Appellate Tribunal shall have all the powers which are vested in a Civil Court under the Code of Civil Procedure. It also provides that the Appellate Tribunal shall be deemed to be a Civil Court for all purposes and the proceedings before it shall be deemed to be judicial proceedings within the meaning of Sections 193 and 196 and for the purposes of Section 228 of the Indian Penal Code and it also provides that the Appellate Tribunal shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

D. Appeals under the Maharashtra Co-operative Societies Act as applicable to Goa lie to the Administrative Tribunal against the decision of the Registrar's nominee. Thus, the Administrative Tribunal exercises the appellate jurisdiction over the Judgments and Orders passed by the Co-operative Court as the Maharashtra Co-operative Societies Act in its application to Goa confers the powers of the Co-operative Judge either on the Registrar or its nominee. Section 149(2) provides that the Tribunal shall consist of a President who shall be a person appointed as the President of the Administrative Tribunal under Section 3 of the Administrative Tribunal Act, 1965. Here also, it is interesting to note that

Rule 101(1) provides that the President of the Administrative Tribunal shall be a person who has been a Judge of any High Court in India or who is or had been a District & Sessions Judge or who has been a Chairman of the Goa, Daman and Diu Administrative Tribunal appointed under Section 3 of the Administrative Tribunal Act, 1965.

E. Appeals, Second Appeals and References under the Goa, Daman and Diu Sales Tax Act, 1964 also lie to the Administrative Tribunal. In this regard, a reference may be made to Section 3(A)(1) of the Goa,Daman and Diu Sales Tax Act, 1964, which provides that the Administrative Tribunal shall consist of a person who has held a Civil Judicial post for at least 10 years or who has been a Member of the Central Legal Service for at least 3 years or who has been in practice as an Advocate at least for 10 years.

F. The Administrative Tribunal also hears Appeals under Section 22 of the Goa, Daman and Diu Administration of Evacuee Property Act, 1964.

G. The Administrative Tribunal also hears Appeals and Second Appeals under the Goa Tax on Luxuries(Hotels and Lodging Houses) Act, 1988.

H. The Administrative Tribunal also hears Appeals under the Goa, Daman and Diu Public Gambling Act, 1976.

I. Article 49 of the Code of Communidade, 1961, provides for an Appeal to the Administrative Tribunal in case of irregularities in the Election. The Administrative Tribunal has also the power to annul the Election. Similarly, Article 154 empowers the Administrative Tribunal to decide the Appeals instituted against the decisions of the Administrator of the Communidade in matters subject to litigation as well as those pertaining to the sheets of yearly returns and expenses of the Communidade. Similarly, the Administrative Tribunal is empowered to decide matters pertaining to irregularities in the auctions of Communidade verified and communicated by the Administrator as well as those alleged by parties in accordance with the Code of Communidade. The Administrative Tribunal has also empowered the Communidade to file suits as well as to give up, confess or conciliate and authorise the respective expenses.

J. The Administrative Tribunal also hears and decides Appeals against the Registrar or refusal to register as Mahajans under Article 26(2) of the Devasthan Regulations. Similarly, the Administrative

Tribunal also hears and decides Appeals against the orders of the Administrator(Mamlatdar) under Article 71 of the Devasthan Regulations.

K. The Administrative Tribunal also hears and decides Appeals under the Goa, Daman and Diu Barge Tax Act, 1973.

L. The Administrative Tribunal also hears and decides Appeals under the Goa, Daman and Diu Irrigation Act, 1973.

M. The Administrative Tribunal also hears and decides Appeals under the Goa Right to Information Act, 1997.

N. The Administrative Tribunal also hears and decides Appeals under Air(Prevention and Control of Pollution) Act, 1981.

O. The Administrative Tribunal also hears and decides Appeals under Water(Prevention and Control of Pollution) Act, 1974.

P. The Administrative Tribunal also hears and decides Appeals under Goa Tax on Entry of Goods Act and Rules, 2000.

Q. The Administrative Tribunal also hears and decides Appeals under Rule 13 of the Bio Medical Waste(Management and Handling) Rules, 1998.

R. The Administrative Tribunal also hears and decides Appeals under the Goa(Brackish Water) Fish Farming Regulation Act, 1991.

S. The Administrative Tribunal also hears and decides Appeals and Revisions under Sections 49 and 50 of the Goa, Daman and Diu Agricultural Tenancy Act, 1964.

T. The Administrative Tribunal also hears and decides Appeals and Revisions under Sections 24 and 25 of the Goa, Daman and Diu Mundkar Protection from Eviction Act.

U. The Administrative Tribunal also hears and decides Appeals and Second Appeals under the Land Revenue Code, 1968.

V. The Administrative Tribunal also hears and decides Revisionns under Daman(Abolition of Proprietorship of Villages) Act, 1962.

W. The Administrative Tribunal also hears and decides Revisions under Abolition of Proprietorship in Diu Act, 1970.

15. Apart from this, the Administrative Tribunal decides Election disputes relating to the Election of the Managing Committee under Article 30 of the Devasthan Regulation. Similarly, under Article 49 of the Code of Communidade, the Administrative Tribunal decides the Election Petition relating to the Election of the Managing Committee. The Administrative Tribunal also decides a Election Petition under Section 16 of the Goa Panchayat Raj Act, 1993 and under Section 144(T) of the Maharashtra Co-operative Societies Act as applicable to Goa. The Administrative Tribunal also decides Election disputes regarding the Election of the President and Vice President of the Goa Municipalities Act, in terms of Section 52(5) of the said Act. Under the Maharashtra Municipalities Act, the designated Court is the Court of the District Judge for deciding the Election disputes under the Maharashtra Municipalities Act.

16. It is thus clear that the Administrative Tribunal performs judicial functions and is a Court. The Administrative Tribunal adjudicates upon disputes that would have been within the jurisdiction of the

ordinary Civil Courts to decide. The Administrative Tribunal acts as an Appellate Court against the decision of the Registrar's nominee under the Maharashtra Co-operative Societies Act as applicable to Goa.

17. The learned Single Judge of this Court in **Maharashtra Co-operative Courts Bar Association and others** v. **State of Maharashtra and others** reported in 1990(3) BCR 437 has held that the Judges of the Co-operative Court are Judicial Officers and their appointments are to be governed by Article 234 of the Constitution of India. The Administrative Tribunal acts as an Appellate Court over the decisions rendered by the Registrar's nominee, who in Goa functions as the Co-operative Court. The Administrative Tribunal is clothed with judicial powers and hears and decides Appeals and Revisions and is, therefore, a Court though the nominclature is that of "Administrative Tribunal". The powers which the President of the Administrative Tribunal exercises and which are conferred on him are judicial in nature and the orders passed by the Administrative Tribunal are binding on the parties. The next question is whether the President of the Administrative Tribunal can be considered as a "District Judge" within the definition of their term in Article 236 of the Constitution of India. It may incidentally

be stated that the pay scales of the President of the Administrative Tribunal and that of a District Judge are identical.

18. Mr. A. N. S. Nadkarni, the learned Advocate General appearing on behalf of the second Respondent i.e. the State of Goa has very fairly conceded that the appointment of the first Respondent cannot be sustained. According to the learned Advocate General, prior consultation with the High Court as is contemplated in Article 233 is a must before appointing any person as President of the Administrative Tribunal.

19. Mr. M. B. D'Costa, the learned Amicus Curiae has invited our attention to the Judgment of the Apex Court in **State of Maharastra** v. **Labour Law Practitioners' Association and others** reported in (1998) 2 SCC 688 to urge before us that the Administrative Tribunal is a Court as it adjudicates upon disputes that would have been within the jurisdiction of the ordinary Civil Courts. Their Lordships of the Supreme Court after considering **Chandra Mohan** v. **State of U.P.** reported in AIR 1966 SC 1495 have held "this Judgment should not be interpreted narrowly to exclude from judicial service new hierarchy of Civil Courts being set up which are headed by a Judge who can be considered as a District Judge bearing in mind the extensive

definition of their term in Article 236 of the Constitution of India". In para 20, Their Lordships of the Supreme Court have endorsed the view of the High Court which have held that the persons presiding over Industrial and Labour Courts would constitute a judicial service so defined and, therefore, the recruitment of Labour Court Judges would be required to be made in accordance with Article 234 of the Constitution of India.

20. Mr. M. B. D'Costa, the learned Amicus Curiae then invited our attention to the Judgment of the Apex Court in **State of Bihar and another** v. **Bal Mukund Sah and others** reported in (2000) 4 SCC 640 and particularly to para 45 of the Report which reads thus:-

> "As we have already seen above, the second part of Article 235 deals with the topic of other conditions of service including the right of appeal which might be guaranteed to judicial officers by appropriate legislation enacted by the authorities acting under Article 309 but that is an operation on the limited field permitted by the second part of Article 235 at the second level of the pyramid of the Subordinate Judiciary and nothing more. Dr. Dhavan was right when he contended that on the scheme of Articles 233 to 235 it is not as if other legislation is a total taboo. However, the said submission ignores the fact that it is the limited field earmarked by the second part of Article 235 regarding permissible regulation

> of conditions of service that is reserved for operation of Article 309 through its appropriate authorities. But, save and except this limited aspect which is permitted, the rest of the control totally vests in the High Court under Article 235 first part. What is permitted by Article 235 cannot be considered as a blanket power entrusted to the Legislature or to the Governor under Article 309 by the Constitution-makers dehors the complete net of constitutional scheme controlling recruitment and appointment to the District Judiciary and the Subordinate Judiciary under Articles 233 and 234 of the Constitution of India. These twin articles conspicuously do not envisage even the limited independent field for operation of Article 309 as is permitted by Article 235 second part. That shows the clear intention of the Constitution-makers that so far as question of recruitment and appointment to available vacancies in the cadre of District Judges and Judges of the Subordinate Judicary is concerned, neither the Legislature nor the Governor, dehors any consultation with the High Court, can have any independent say".(Emphasis supplied by us)

21. Similarly, our attention was also invited to the decision of the Apex Court in **Chandramouleshwar Prasad** v. **The Patna High Court and others** reported in 1969(3) SCC 56 and particularly to the observations of the Apex Court at para 7 which reads thus:

> "Consultation with the High Court under Article 233 is not an empty formality. So far as promotion of officers to the cadre of District Judges is concerned the High Court is best fitted to adjudge the

> claims and merits of persons to be considered for promotion. The Governor cannot discharge his function under Article 233 if he makes an appointment of a person without ascertaining the High Court's view in regard thereto. It was strenuously contended on behalf of the State of Bihar that the materials before the Court amply demonstrate that there had been consultation with the High Court before the issue of the notification of October 17, 1968. It was said that the High Court had given the Government its views in the matter; the Government was posted with all the facts and there was consultation sufficient for the purpose of Article 233. We cannot accept this. Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. In our opinion, the notification of October 17, 1968 was not in compliance with Article 233 of the Constitution. In the absence of consultation the validity of the notification of October 17, 1968 cannot be sustained".

22. Thus, looking to the functions of the Administrative Tribunal, we are of the considered view that the Administrative Tribunal is a Court. Since, it is vested with judicial powers of Appeal and Revision under the various statutes, which powers are to be exercised by a District Judge, we are of the view that

the post of the President of the Administrative Tribunal is equivalent to the post of a District Judge within the meaning of Article 236 of the Constitution of India. In our considered view, therefore, the Respondent No.1 could not have been appointed as the President of the Administrative Tribunal without prior consultation with the High Court. The Respondent No.1 has, therefore, not been appointed in terms of Article 233 of the Constitution of India and, therefore, his appointment is illegal and he is usurper of the Office of the Administrative Tribunal.

23. Mr. M. S. Usgaonkar, the learned Senior Counsel appearing on behalf of the first Respondent has urged before us that the first Respondent is qualified as per the qualifications prescribed and thus the appointment of the first Respondent has not been made in contravention of the Goa Administrative Tribunal Acts and Rules. Further, it is urged by Mr. Usgaonkar, the learned Senior Counsel appearing on behalf of the first Respondent that since the Respondent No.1 fulfils the eligibility criteria, the Respondent No.1 could be appointed after consultation with the High Court and thus, the writ of quo warranto would be futile. The learned Senior Counsel appearing on behalf of the first Respondent has placed strong reliance on the decision in **P. L. Lakhanpal** v. **Ajit Nath Ray** reported in AIR 1975

Delhi 66. In this case, a writ of quo warranto was prayed for against the then Chief Justice of India on the ground that the Chief Justice of India had been appointed in violation of Article 124(2) of the Constitution of India as the mandatory consultation comprehended was not made and as the Rule of seniority which inheres in that Article was not followed and the appointment was malafide. The Full Bench of the Delhi High Court held that the issue of the writ of quo warranto would be futile because of the result of resignation of the Judges who were senior to Justice A. N. Ray(Respondent) had resigned and Justice A. N. Ray, therefore, became the seniormost puinse Judge and not only could be re-appointed but would be entitled to be re-appointed as the Chief Justice of India.

24. The decision of the Full Bench and the point canvassed by Mr. M. S. Usgaonkar, the learned Counsel appearing on behalf of the first Respondent fell for consideration before the Division Bench of this Court in the Judgment of **Gajanan Krishnaji Bapat** v. **Corporation of the City of Nagpur and others** reported in 1980 Lab I.C. 167. The Division Bench in para 15 after considering the Full Bench Judgment of the Delhi High Court has held thus:-

> "Though the above cases have dealt with the principle of the futility of the writ of quo warranto, we

think that this aspect of futility will have to be borne in mind even when we consider the grant or otherwise of any other type of writ, order or direction. Ordinarily, this Court would not issue a writ which has an element of futility. But the main question is as to whether in the present case an order or writ quashing the impugned orders is likely to become futile or not. It was contended by Mr. Bobde that the Corporation may in its meeting re-appoint respondent No.4. He drew our attention to the fact that respondent No.4 is qualified to hold the post of Dean and as such there could not be any impediment for the re-appointment of the respondent No.4. We think that the principle of futility arising on account of the likelihood of re-appointment cannot be extended to a case where the appointing authority has no power to make the appointment. To put it more clearly, would it be possible for the appointing authority, as also the appointed person, to say that though the appointment has not emanated from the competent, still do not quash the appointment because one cannot rule out the possibility that some rightful authority having competence to make the appointment may make the appointment in favour of respondent No.4? We feel that such defence would not be permissible by extending the principle of futility of a writ. The contingency of re-appointment would have some importance when the person who has made the first appointment can make such re-appointment after curing any irregularity. This does not include a case where the appointing authority has no power to make an appointment. It was rightly urged on behalf of the petitioner that if the respondents' contention is accepted, the position would become very anomalous and

> irrational, as any person could make any appointment for any post and the appointee with all impurity would sit tight on the post by asking the Court not to exercise the discretion as the possibility of the rightful authority re-appointing that person could not be ruled out".

25. Mr. M. S. Usgaonkar, the learned Senior Counsel appearing on behalf of the first Respondent has not seriously canvassed the point of locus standi of the Petitioner to file the Petition. However, a reference may usefully be made in the Judgment of the Apex Court in **S. P. Gupta** v. **Union of India** reported in 1981(Supp) SCC 87 wherein the Apex Court has held thus:-

> "Yet again, whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public who is not a mere busybody or a meddlesome interloper but one who has sufficient interest in the proceeding. In the absence of a machinery to effectively represent the public interest generally in courts, it is necessary to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the

> Constitution or the law by allowing public minded persons and organisations to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of power and prevent violations of law. The oppression might be financial, commercial, corporate or governmental".

26. The appointment of the first Respondent cannot be faulted on the ground that the first Respondent is a relative of the third Respondent who was then the State Law Minister. An independent Selection Committee had been constituted comprising of Respondent Nos.4, 5 and 6 and they had selected the first Respondent from amongst the various candidates who had applied in pursuance to the advertisement. The Selection Committee comprising of Respondent Nos.4, 5 and 6 are independent persons and there is nothing to suggest that the said Selection Committee was amenable to being pressurised in selecting a particular candidate. There is also nothing on record to suggest that the third Respondernt, who is distantly related to the first Respondent, has in any manner influenced the Selection Committee. We, therefore, see no merit in this submission of the Petitioner.

27. We, therefore, unhesitantly hold that the appointment of Respondent No.1 is not by any authority of law. The Government had no authority to appoint the first Respondent as the President of the Administrative Tribunal in flagrant breach of the mandate of Article 233 of the Constitution of India. In the preceding para of the Judgment, we have held that the post of the President of the Administrative Tribunal is equivalent to the post of a District Judge as defined in Article 236 of the Constitution of India. Thus, the Order appointing the first Respondent dated 24th October, 2001 cannot be sustained and deserves to be quashed.

28. This is a public interest litigation and the Petitioner has not challenged the validity of the Rules relating to the appointment of the President of the Administrative Tribunal. The appointment of the first Respondent, without prior consultation with the High Court, is ultra vires the Constitution of India. Hence the Rules are ineffective and unenforceable. According to us, the Rules providing for the appointment of the President of the Administrative Tribunal instead of being struck down as unconstitutional, can be read down to include consultation with the High Court, in consonance with Article 233 of the Constitution of India, before appointing any person as the President of the Administrative Tribunal.

29. The Apex Court in **Delhi Transport Corporation** v. **D.T.C. Mazdoor Congress and others** reported in AIR 1991 SC 101 has held as under:

> "The doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the imcompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made".

30. Relying on the aforesaid Judgment of the Apex Court, we are of the considered opinion that in order to save the Rules from being struck down as ultra vires the Constitution, the Rules should be read down to mandatorily include consultation with the High Court before making any appointment to the post of the President or the Additional President of the Administrative Tribunal.

31. We hope that in future when the appointments to the post of the President of the Administrative Tribunal are made, Article 233 of the Constitution of India would be followed in its letter and spirit so that the independence of the Judiciary is secured which the Apex Court says is the "bulkwark".

32. Before parting with the Judgment, we must place on record our deep appreciation to the efforts taken by Mr. M. B. D'Costa, the learned Counsel appointed by us as Amicus Curiae, in placing before us the relevant and necessary data which has enabled us to effectively adjudicate the point raised in this Petition.

33. In the result, therefore, Writ Petition No.351 of 2001 is allowed. The appointment of the first Respondent as the President of the Administrative Tribunal, dated 24th October, 2001, is hereby quashed and set aside. Rule made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

V. C. DAGA, J.

P. V. HARDAS, J.